

Massachusetts Department of Environmental Protection  
Bureau of Resource Protection – Waterways Regulation Program

## Instructions, Do you need a Chapter 91 License?

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### 1. Where is your project located?

**The Public Waterfront Act MGL Chapter 91 and its regulations require a Chapter 91 waterways license or permit for any activity located in, under, or over flowed tidelands, filled tidelands, Great Ponds and certain non-tidal rivers and streams located throughout the Commonwealth.**

These projects and activities include but are not limited to: construction of docks, piers, wharves, floats, retaining walls, revetments, fill, dredging, beach nourishment, pilings, culverts, bridges, dams and some waterfront buildings, if on filled lands or over the water, that are located in any one of the four geographic areas described below.

Chapter 91 Waterways licenses and permits are necessary to protect and promote the public interest in these water bodies by ensuring that proposed projects and activities do not unreasonably interfere with navigation and the rights of the public or adjacent waterfront property owners; protect water-dependent uses and serve a proper public purpose.

#### **Flowed Tidelands**

Flowed tidelands are lands that are in, on, over, and under tidal waters seaward of the current mean high water mark. This jurisdiction extends seaward to the Commonwealth's 3-mile limit of territorial jurisdiction. Any structure or activity seaward of the current mean high water mark requires Chapter 91 authorization.

#### **Filled Tidelands**

Filled tidelands are former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill. Chapter 91 authorization is required for activities on filled tidelands if located:

- a) in designated port areas (DPAs), or
- b) between the first public way (i.e. road) and the mean high water mark, or
- c) between 250 feet and the shore, whichever is further from the water.

#### **Great Ponds**

A Great Pond is a pond having a water surface area of 10 acres or more in its natural (historic) state. Activities in, on, over, or under the entire area of any Great Pond, whether larger or smaller today than historically, require Chapter 91 authorization.

#### **Non-tidal Rivers and Streams**

A non-tidal river or stream is a river or stream that is not affected by the actions of the ocean's tide. Non-tidal rivers and streams subject to Chapter 91 jurisdiction include sections of the Westfield River in West Springfield and Agawam, non-tidal portions of the Merrimack River, the Connecticut River and any non-tidal river or stream where public funds have been expended and which are navigable during any season by any vessel including canoe, kayak, raft, or rowboat. Certain specified projects not affecting navigation on non-tidal rivers and streams, however, are exempt from Chapter 91 licensing under the provisions of 310 CMR 9.05(3)(g). Any activity that reduces the space available for navigation requires Chapter 91 authorization.

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### 2. Is your project water-dependent?

Water-dependent uses are those activities that rely upon being in or near the water. If none of the statements below describe your activity in its *entirety*, the Department will consider your project to be **nonwater-dependent**. *Inclusion of a nonwater-dependent use in a water-dependent use proposal will render the proposal as nonwater-dependent.* Upon review of your Chapter 91 Waterways license or permit application, the Department will provide a Use Statement based on the information supplied in the application.

Project Type	Use Statement
<b>Pier</b> (private, non-commercial)	Non-commercial docking and boating access to navigable waters.
<b>Marina</b> (public recreational boating facility)	To provide a public recreational boating facility
<b>Marina</b> (private recreational boating facility)	To provide a private recreational boating facility
<b>Bulkhead/Seawall/Revetment/Riprap, etc.</b>	Shoreline stabilization for the protection of: a) existing structures, or b) a water-dependent use  Notes: (1) Pick either a) or b), whichever is appropriate (2) If these structures will protect a new nonwater-dependent use then the use of these structures will also be considered nonwater-dependent. [see CMR 9.12(2)(a)(11)]
<b>Pipeline crossing</b> (sewer, water gas, etc.)	Transmission of water/wastewater/natural gas
<b>Powerline crossing</b>	Transmission of electricity, telecommunication
<b>Public Boardwalk/Waterfront Park</b> (including facilities for water-dependent recreation activities)	Public access to waterfront open space for passive recreational purposes
<b>Public Landing/Boat Ramp</b>	Public access to navigable waters
<b>Beach Nourishment</b>	1) Public access to waterfront open space for recreational purposes and  2) Shoreline stabilization
<b>Boathouse</b> (accessory to private noncommercial pier)	Noncommercial storage of boats and other associated water-dependent purposes
<b>Water-dependent Industrial Uses</b>	Boat yards, hydroelectric plants, manufacturing facilities associated with commercial vessel operations.
<b>Waterborne Passenger Facilities</b> (ferries, taxis, etc.)	To provide a waterborne passenger transportation facility
<b>Dams/Tidal Gates</b>	To control water levels

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## 3. What type of Chapter 91 license or permit will you need?

The Waterways Program offers several types of Chapter 91 Waterways License approvals to address a wide variety of proposed water-dependent and nonwater-dependent use activities. Each type of approval is discussed below.

<u>CHAPTER 91 LICENSE APPLICATION TYPE</u>	<u>MASSDEP APPLICATION #</u>
<b>SIMPLIFIED</b> (For certain Water-dependent Uses, Nonwater-dependent Uses)	BRP WW06
<b>WATER DEPENDENT</b>	
▪ <u>General</u>	BRP WW01
<b>NONWATER-DEPENDENT</b>	
▪ <u>Partial</u>	BRP WW14
▪ <u>Full</u>	BRP WW15
▪ <u>Municipal Harbor Plan</u>	BRP WW16
▪ <u>Joint MEPA/EIR</u>	BRP WW17
<b>AMENDMENT</b>	BRP WW03
▪ For Water-dependent Uses, Nonwater-dependent Uses	

### SIMPLIFIED Chapter 91 License [BRP WW06]

MassDEP created Simplified License application procedures especially for *owners of small residential docks, piers, seawalls and bulkheads* that make the license application process easier and less expensive. Residential waterfront property owners should be able to complete and file their Chapter 91 license applications without the need for professional assistance. In addition, the costly requirements for professionally prepared Mylar construction plans generally have been eliminated. However, even if your project is eligible for a Simplified license, you may wish to seek a general Waterways license if you desire a license term for a period greater than 15 years.

Water-dependent and Nonwater-dependent structures eligible for the Simplified application review process include: docks, piers and other small-scale structures that are accessory to residential uses or serve as non-commercial community docking facilities.

#### Eligible structures must also meet the following size requirements:

- **pre-1984 existing structures - less than 600 square feet; or**
- **post-1984 existing or new structures - less than 600 square feet and water-dependent**

Application Type	Brief Description	Term	Fees	Application Review Period
<b>SIMPLIFIED</b> BRP WW06	For Water-dependent Uses and Nonwater-dependent Uses meeting SIMPLIFIED eligibility requirements.	15 years	Application - \$65.00 Displacement – EXEMPT Occupation – \$1.00/yd <sup>2</sup> x term Annual Compliance – EXEMPT	90 days from close of comment period (see 310 CMR 9.10(4))

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## WATER-DEPENDENT Chapter 91 License [BRP WW 01]

All new or unauthorized water-dependent use projects, subject to the jurisdiction of Chapter 91 and that do not meet the Simplified Waterways License criteria described above, must obtain a General Water-Dependent Chapter 91 Waterways License. Water-dependent uses are those activities that rely upon being in or near the water. These activities are presumed to serve a proper public purpose. Projects that are eligible for a Simplified license, but for which a longer license term is sought, may apply for a general water-dependent Waterways license. **[see page 5, IS YOUR PROJECT WATER-DEPENDENT?]**

Application Type	Brief Description	Term	Fees	Application Review Period
<b>GENERAL</b> BRP WW01	For Water-dependent use proposals that do not meet the SIMPLIFIED eligibility criteria	30 years	Application – \$175 – Residential $\leq 4$ units \$270 – Non Residential \$2,730 – Extended Term Displacement - \$2.00/yd <sup>3</sup> Occupation – \$1.00/yd <sup>2</sup> x term Annual Compliance – EXEMPT	276 days

## NONWATER-DEPENDENT Chapter 91 License [BRP WW14, BRP WW15, BRP WW16, BRP WW17]

All new or unauthorized nonwater-dependent use projects, subject to the jurisdiction of Chapter 91 and that do not meet the Simplified Waterways License criteria described above, must obtain a General Nonwater-Dependent Chapter 91 Waterways License. Projects that are eligible for a Simplified license, but for which a longer license term is sought, may apply for a general nonwater-dependent Waterways license. An applicant may choose one of the following four application review options listed below. In addition to fees and processing time, selection of a particular nonwater-dependent application review option will largely depend upon the nature and complexity of the proposed activity and the level of detailed information compiled and contained in the initial application submittal. **[see page 5, IS YOUR PROJECT WATER-DEPENDENT?]**

Application Type	Brief Description	Term	Fees	Application Review Period
<b>FULL</b> BRP WW14	Must contain complete professionally certified construction plans (Mylar) and obtain all local approvals (see 310 CMR 9.11)	30 years	Application – \$545 Residential $\leq 4$ units, \$1,635-Non residential \$2,730– Extended Term Displacement - \$10.00/yd <sup>3</sup> Occupation – \$2.00/yd <sup>2</sup> x term Annual Compliance – \$80.00	231 days
<b>PARTIAL</b> BRP WW15	Same as FULL Application without professionally certified Mylar construction plans and local approvals	30 years	Application – \$545– Residential $\leq 4$ units, \$1,635 - Non residential \$2,730 – Extended Term Displacement - \$10.00/yd <sup>3</sup> Occupation – \$2.00/yd <sup>2</sup> x term Annual Compliance – \$80.00	311 days
<b>MUNICIPAL HARBOR PLAN</b> BRP WW16	For projects located in areas with established Municipal Harbor Plans (MHP)	30 years	Application – \$545– Residential $\leq 4$ units, \$1,635- Non residential \$2,730. – Extended Term Displacement - \$10.00/yd <sup>3</sup> Occupation – \$2.00/yd <sup>2</sup> x term Annual Compliance – \$80.00	246 days
<b>JOINT EIR &amp; MEPA</b> BRP WW17	For projects that trigger established MEPA thresholds (see MEPA Regulations; 301 CMR 11.00)	30 years	Application – \$545– Residential $\leq 4$ units, \$1,635 - Non residential \$2,730 – Extended Term Displacement - \$10.00/yd <sup>3</sup> Occupation – \$2.00/yd <sup>2</sup> x term Annual Compliance – \$80.00	191 days

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### Chapter 91 PERMIT

Projects NOT involving work on fill or structures may apply for a Chapter 91 Waterways Permit for the activities listed below. Permit applications are generally faster to process than license applications. At the applicant's discretion, these activities may instead be included as part of a Chapter 91 Waterways license application.

Any dredging\*, beach nourishment, disposal involving the subaqueous placement of unconsolidated material below the low water mark, burning of rubbish or other material upon the water in accordance with MGL Chapter 91, Section 52, and any lowering of the water level of a great pond, except for certain purposes described in 310 CMR 9.05(2)(e).

\* Maintenance dredging may be permitted for up to 10 years.

Application Type	Term	Fees	Application Review Period
<b>WATER-DEPENDENT</b> BRP WW01	5 – 10 years	Application – \$175.00 – Residential ≤ 4 units, \$270.00 - Non residential Displacement – EXEMPT Occupation – EXEMPT	105 days

### AMENDMENT to Chapter 91 License or Permit [BRP WW03]

An applicant may apply to amend an existing Chapter 91 Waterways licensed or permitted facility/use for the following purposes:

- authorizing a structural alteration or change in use **not** defined as substantial (see 310 CMR 9.02),
- delineating a reconfiguration zone within a marina, or
- renewing a license term for period not to exceed a term period authorized under the original license or permit.

Any change in use or substantial structural alteration of any existing licensed structures or fill will require a new Chapter 91 Waterways license or permit. For example, any increase in the length, width, or height of an existing licensed structure or fill would require the issuance of a new license. Maintenance and repair of licensed fill and/or structures in accordance with the regulations is permitted without a license or a license amendment, as is maintenance dredging for 5 years after issuance of the license or permit.

Application Type	Application Fee	Application Review Period
BRP WW03a Amended Residential Water-Dependent Use projects, 4 units or less	\$85	276 days
BRP WW03b Amended Nonresidential Water-Dependent Use Projects	\$105	276 days

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Application Type	Application Fee	Application Review Period
BRP WW03c Amendments for Residential nonwater-dependent use project, four dwelling units or less	\$435	276 days
BRP WW03d Amendments for other nonwater-dependent use projects	\$815	276 days
BRP WW03e Amendments for licenses with Extended Terms or facilities described in 310 CMR 9.16(3)(b)2.	\$1,090	276 days

#### 4. Avoid the most common mistakes when applying for a chapter 91 license or permit.

- ☐ **For large or complex projects**, you may request a pre-application consultation with the Department's Waterways Regulation Program for preliminary guidance on the applicability of the Waterways Program's regulatory standards and licensing procedures as they may pertain to your project proposal.
- ☐ **Follow the construction plan specifications** for your proposed project listed in Appendices A or B of the Waterways License Application.
- ☐ **Refer to the Application Completion Checklist** (see Waterways Application – Appendix C).
- ☐ **Submit a completed Chapter 91 Waterways License Application** together with MassDEP's *Transmittal Form for Permit Application and Payment*<sup>1</sup> to the Department location listed below.

**Water-Dependent Applications -**

MassDEP's Regional Office corresponding to your project's location. Find your region:  
<http://www.mass.gov/dep/about/region/findyour.htm>

**Nonwater-Dependent Applications -**

MassDEP's Boston Office – Department of Environmental Protection,  
Waterways Regulation Program, One Winter Street, Boston, MA 02108

- ☐ **Submit the appropriate Chapter 91 Waterways Application Fee**<sup>2</sup> together with a photocopy of MassDEP's *Transmittal Form for Permit Application and Payment*<sup>1</sup> that you submitted with your application to:

Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

<sup>1</sup> The *Transmittal Form for Permit Application and Payment* may be obtained from the Waterways web site, <http://mass.gov/dep/service/online/trasmfrm.shtml> or from any one of MassDEP's Regional Offices. Find your region: <http://www.mass.gov/dep/about/region/findyour.htm>

<sup>2</sup> Make Chapter 91 License Application fee payment by check or money order payable to: *The Commonwealth of Massachusetts, DEP.*

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### 5. What regulations apply to the Chapter 91 licensing process?

#### 1. Waterways Regulations, 310 CMR 9.00

- [mass.gov/dep/matrix.htm](http://mass.gov/dep/matrix.htm)
- State House Bookstore - Room 116, Boston, MA 02133, 617-727- 2834
- State House West Bookstore – 436 Dwight Street, Springfield, MA 01103, (413) 784-1376

#### 2. Timely Action and Fee Provisions, 310 CMR 4.00

- State House Bookstore - Room 116, Boston, MA 02133, 617 727- 2834
- State House West Bookstore – 436 Dwight Street, Springfield, MA 01103, (413) 784-1376

### 6. After you receive a Chapter 91 license

#### LICENSE RECORDATION

The Chapter 91 license and plan must be recorded at the Registry of Deeds within the property's chain of title within 60 days of the date of issuance. The Licensee is required to provide MassDEP with written notice of said recordation including; date of recordation and instrument number, name of Registry of Deeds or Land Court where recordation was made. *Failure of the Licensee to record said license and plan within this 60-day period will render the license VOID.*

#### LICENSE RENEWAL AND/OR TRANSFER

A Chapter 91 Waterways license may be renewed if the structure remains sound and conforms to the construction plans in the original application. *The Renewal fee for Simplified Licenses is \$25 and for all other Waterways Licenses - one half (1/2) of the original license application fee.* A license is automatically transferred upon a change of ownership of the property for which the license has been deed recorded.

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## *Chapter 91 License Application - Timelines At A Glance*

MassDEP ACTION	WATER-DEPENDENT (WD)	NONWATER-DEPENDENT (NWD)			
	- General - Amendment	Partial	Full	Municipal Harbor Plan	Joint MEPA & EIR
- Assign file # - Determine water dependency - Issue public notice	≤ 45 days	≤45 days	≤45 days (Admin. Review)	≤45 days	≤25 days
<b>Public Comment Period</b> (includes Public Hearing)	30 - 60 days	30 – 60 days	30 – 60 days	30 - 60 days	30 – 60 days
<b>Administrative Completeness Review</b>	≤ 60 days	≤30 days	-----	≤30 days	-----
<b>Technical Review &amp; Issue Written Determination</b>	≤ 90 days	≤60 days	≤60 days	≤45 days	≤30 days
<b>Appeal Period</b>	21 days	21 days	21 days	21 days	21 days
<b>Issue license</b> (or 15 days from date of Governor's signature, whichever is later)	-----	≤45 days	≤45 days	≤45 days	≤45 days
<b>Maximum Application Process Time</b>	≤ 276 days	≤ 311 days	≤ 231 days	≤ 246 days	≤ 191 days

**NOTE:**

*All timelines described herein represent maximum time periods. All Chapter 91 license application review timelines begin with the first day following the act that initiates the running of the particular application review period, and includes every calendar day, including the last day of the particular review period that is being computed. Also, if the last day of an application review period is a Saturday, Sunday, legal holiday, or any other day in which the Department's offices are closed, the deadline shall run to the end of the next business day.*



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### Chapter 91 License Application - *Fees Explained*

#### APPLICATION FEE

An Application Fee is charged for all Waterways License and Permit applications. The Application Fee is non-refundable and is paid at the time of submission of the original application\* by check or money order made payable to *The Commonwealth of Massachusetts, DEP*. Please consult the Chapter 91 Waterways Fee Schedules (pages 2-4) above.

**\* Under circumstances of extreme financial hardship, MassDEP grants extended time periods for payment of License and Permit Application fees. Please refer to 310 CMR 4.04(3)(c) to identify the procedures for making a Hardship Request to the Department.**

**NOTE:** You may be subject to a *double* application fee if your application for Chapter 91 authorization results from an enforcement action by the Department or another agency of the Commonwealth or its subdivisions, or if your application seeks authorization for an existing unauthorized structure or use.

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#### DISPLACEMENT FEE

Is paid by license holders for their use of state waters. Displacement fees are assessed after MassDEP has determined it will approve a license or license amendment application and must be paid prior to MassDEP's issuance of license. *Projects authorized by PERMIT or licensed through the SIMPLIFIED application review process are exempt from Displacement Fees.* Displacement fees are based on per cubic yard of tidelands displaced by the project. Please consult the Chapter 91 Waterways Fee Schedules (pages 2-4) above.

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#### OCCUPATION FEE

Is paid by license holders for their use of state land in projects authorized by the license. Occupation fees are assessed after MassDEP has determined it will approve a license or license amendment and must be paid prior to MassDEP's issuance of the license. *Projects authorized by PERMIT are exempt from Occupation Fees.* The Occupation fee is calculated by multiplying the dollar rate shown by the length of the license term, in years, and by the area of occupied land held by the Commonwealth. This is a fixed fee for the term of the license and is assessed on a lump sum basis, except as provided in 310 CMR 9.16(3)(d). Please consult the Chapter 91 Waterways Fee Schedules (pages 2-4) above.

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#### ANNUAL COMPLIANCE FEE

There is an annual fee of \$80 for all nonwater-dependent licensed sites. This is a facility with a license to use tidelands and which provides public access or other water-dependent benefits as a license condition. *Projects licensed through the SIMPLIFIED application review process are exempt from Annual Compliance Fees.*

<b>please refer to the application fee tables (pages 2- 4 above) for a list of applicable fees.</b>
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